

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

Rule 1004. Involuntary Petition Against a Partnership.

After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

Rule 1004.1. Petition for an Infant or Incompetent Person.

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is

2 **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 2004. Examination

* * * * *

(c) **COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS.** The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

* * * * *

Rule 2014. Employment of a Professional Person.

(a) **APPLICATION FOR ORDER APPROVING EMPLOYMENT.** An application for an order approving the employment of a professional person under §327, §1103, or

§1114 of the Code shall be in writing and may be made only by the trustee or committee. The application shall state:

(1) specific facts showing why the employment is necessary;

(2) the name of the person to be employed and the reasons for the selection;

(3) the professional services to be rendered;

(4) any proposed arrangement for compensation;

and

(5) that, to the best of the trustee's or committee's knowledge, the person to be employed is eligible under the Code for employment for the purposes set forth in the application.

(b) STATEMENT OF PROFESSIONAL. The application shall be accompanied by a verified statement of the person to be employed, made according to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, which shall state:

(1) that the person is eligible under the Code for employment for the purposes set forth in the application;

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(2) any interest that the person holds or represents that is adverse to the estate;

(3) any interest in, relationship to, or connection the person has with the debtor;

(4) any interest, connection, or relationship the person has that may cause the court or a party in interest reasonably to question whether the person is disinterested under § 101;

(5) any relationship the person has with the United States trustee, or with any employee of the United States trustee, for the region in which the case is pending;

(6) the information required to be disclosed under § 329(a) if the person is an attorney; and

(7) whether the person shared or has agreed to share any compensation with any person, other than a partner, employee, or regular associate of the person to be employed, and if so, the details.

(c) SERVICE AND TRANSMITTAL OF APPLICATION.

(1) The applicant shall serve a copy of the application on:

(A) the trustee;

(B) the debtor and the debtor's attorney;

(C) any committee elected under §705 or appointed under § 1102, or, if the case is a chapter 9 case or a chapter 11 case and no committee of unsecured creditors has been appointed, on the creditors included on the list filed under Rule 1007(d); and

(D) any other entity as the court may direct.

(2) Unless the case is a chapter 9 case, the applicant shall transmit a copy of the application to the United States trustee.

(d) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF EMPLOYED PROFESSIONAL.

If the court approves the employment of an individual, partnership, or corporation, any partner, member, or regular

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

associate of the individual, partnership, or corporation may act as the person so employed, without further order of the court. If a partnership is employed, a further order approving employment is not required if the partnership has dissolved solely because a partner was added or withdrew.

(e) SUPPLEMENTAL STATEMENT OF PROFESSIONAL. Within 15 days after becoming aware of any undisclosed matter that is required to be disclosed under Rule 2014(b), a person employed under this rule shall file a supplemental statement, serve a copy on each entity listed in Rule 2014(c), and, unless the case is a chapter 9 case, transmit a copy to the United States trustee.

Rule 2015. Duty to Keep Records, Make Reports and Give Notice of Case

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall

* * * * *

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United

States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter.

* * * * *

Rule 4004. Grant or Denial of Discharge.

* * * * *

(c) GRANT OF DISCHARGE

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual,

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case under § 707 is pending,

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending,

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

* * * * *

Rule 9014. Contested Matters

(a) MOTION. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by

Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ.P.

(c) APPLICATION OF PART VII RULES. Unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

(e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.

Rule 9027. Removal

(a) NOTICE OF REMOVAL.

* * * * *

(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

* * * * *

AMENDMENTS TO OFFICIAL FORMS 1 and 15

In addition to requesting approval of the amendments to these forms and transmittal to the Judicial Conference, the Advisory

Committee requests that the amendments be effective as of December 1, 2001, rather than upon their adoption by the Judicial Conference. The delay in the effective date of these amendments is necessary for two reasons. First, the amendment to Official Form 15 conforms it to the proposed amendments to Rule 3020 that the Supreme Court promulgated on April 23, 2001. The amendments to the rule will become effective on December 1, 2001, if Congress takes no action to the contrary. Therefore, delaying the effective date of the form will coincide with the effective date of the rule amendment that the form implements.

Official Form 1 is the form of a voluntary petition. It is used in the vast majority of bankruptcy cases. The public and the bar rely heavily on commercial publishers for copies of the forms for use in their cases. The Administrative Office cannot provide copies of the form prior to its adoption by the Judicial Conference. Therefore, it is appropriate to set a delayed effective date for the form. This will provide an opportunity for court personnel to familiarize themselves with the form and will permit publishers and software vendors to distribute the new form to their customers in a timely fashion. Since December 1 is the date on which rules amendments generally become effective, it is appropriate to use that date for the effective date of these amendments to the Official Forms.